

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

James Scott Tordoff,

Debtor.

Case No. 04-42018

Chapter 7 Case

RJM Construction, Inc.,

Plaintiff,

Adv. No. 04-4204

v.

James Scott Tordoff,

Defendant.

Defendant's Motion for Judgment on the Pleadings

To: The United States Bankruptcy Court and the parties specified in the attached certificate of service.

1. James Scott Tordoff ("Defendant"), moves the court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 1:30 p.m. on September 15, 2004, in Courtroom 8 West of the United States Bankruptcy Court, Eighth Floor, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota.

3. Any response to this motion must be mailed and delivered not later than September 10, 2004, which is three days before the time set for hearing (excluding Saturdays, Sundays and Holidays) or filed and served by mail no later than September 6, 2004 which, is seven days before the hearing date (excluding Saturdays, Sundays and Holidays). UNLESS A

RESPONSE OPPOSING THE MOTION IS FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Fed. R. Bankr. P. 5005, and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on April 12, 2004. This case is now pending in this Court.

5. This motion arises under 28 U.S.C. §1334 and Bankruptcy Rule 7012. This motion is filed under Bankruptcy Rule 9014 and Local Rule 9013-1. Defendant requests relief in the form of an order dismissing Plaintiff's amended complaint.

Summary of Basis for Motion

6. By complaint dated July 20, 2004, Plaintiff sought relief in the nature of a determination that its alleged claims against the Defendant are non-dischargeable under 11 U.S.C. §523(a)(2)(A) and (a)(4).

7. After Defendant filed a motion seeking partial dismissal of the Complaint, Plaintiff, on August 20, 2004, filed an amended complaint (the "Amended Complaint"). A copy of the Amended Complaint is attached hereto as Exhibit A.

8. By answer of the same date as this Motion, the Defendant replied to the Amended Complaint.

9. Because the Amended Complaint does not allege facts that would support a finding that Defendant owed a fiduciary duty to Plaintiff, Plaintiff's claim under Section 523(a)(4) should be dismissed with prejudice.

10. Since Plaintiff has not alleged facts that would support a finding that Defendant engaged in any conduct that might be characterized as false pretenses, misrepresentations, or actual fraud, Plaintiff's claims under Section 523(a)(2)(A) should be dismissed with prejudice.

Conclusion

11. Pursuant to Local Rule 9013-2, Defendant gives notice that he may, if necessary, testify at the hearing on the Motion. The proposed witness will testify as to facts relevant to this Motion.

WHEREFORE, Defendant requests that the Court enter an order: (i) dismissing all counts in Amended Complaint, and (ii) granting such further relief as the Court may deem just and equitable.

HENSON & EFRON, P.A.

Dated: August 30, 2004

/e/ William I. Kampf
William I. Kampf, (#53387)
Joel D. Nessel (#030475X)
220 South Sixth Street, Suite 1800
Minneapolis, MN 55402
Telephone: 612-339-2500

Attorneys for Defendant

VERIFICATION

I, Joel D. Nessel, attorney for Defendant, declare under penalty of perjury that the facts contained in the foregoing Notice of Hearing and Motion for Judgment on the Pleadings, are true and correct to the best of my knowledge, information and belief.

Dated: August 30, 2004

/s/ Joel D. Nessel

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION**

In re

James Scott Tordoff,

Debtor.

RJM Construction, Inc.,

Plaintiff,

v.

James Scott Tordoff,

Defendant.

Bky. No. 04-42018-RJK

Adv. No. 04-4204

Chapter 7

**AMENDED
COMPLAINT**

Plaintiff, RJM Construction, Inc. ("RJM") for its Amended Complaint against Defendant James Scott Tordoff ("Tordoff") states and alleges as follows:

JURISDICTION

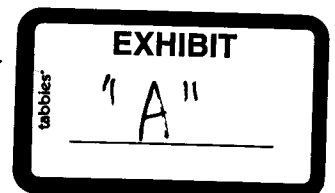
1. This is an adversary proceeding brought by the Plaintiff as a creditor to obtain a nondischargeable judgment against the Debtor under the provisions of 11 U.S.C. § 523.

2. The Debtor is subject to the jurisdiction of this Court in his pending Chapter 7 case captioned above.

3. This Court has jurisdiction over this proceeding pursuant to 11 U.S.C. § 523, 28 U.S.C. § 1334 and 28 U.S.C. § 157.

4. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The Debtor filed a Voluntary Chapter 7 Petition on April 28, 2004.



6. This is a core proceeding under 28 U.S.C. § 157.

PARTIES

7. Plaintiff is a Minnesota corporation with a principal place of business at 5455 Highway 169, Plymouth, Minnesota 55442.

8. At all relevant times, Tordoff was the president, director and controlling shareholder of Gruppo, Inc. ("Gruppo"), a Minnesota corporation with a last known business address of 2835 Harriet Avenue South, Minneapolis, Minnesota 55403.

FACTS

9. RJM acted as the general contractor on a project known as the "Winthrop & Weinstine" law office construction project (the "Project") located within the office building at 225 South Sixth Street, Minneapolis, Minnesota.

10. RJM contracted with Gruppo. Pursuant to this contract, Gruppo agreed to furnish and install all structural steel, metal fabrications, metal stairs, handrails, railings, guardrails and to remove existing structural steel and perform related work.

11. To perform its obligations under the contract, Gruppo entered into subcontracts with Anderson Iron, Inc. ("Anderson") and Harmon, Inc. ("Harmon").

12. Anderson is owed \$32,012.52 by Gruppo for labor, skill and/or materials to the Project.

13. Harmon is owed \$30,819.00 by Gruppo for labor, skill and/or materials to the Project.

14. For valuable consideration, Anderson and Harmon have assigned all rights and interest in their creditor claims against Gruppo to RJM.

COUNT I - Exception to discharge under 11 U.S.C. § 523(a)(4)

15. RJM repeats and realleges paragraphs 1 through 14 as though fully set forth herein.

16. Upon information and belief, Gruppo was insolvent as early as February, 2003.

17. While Gruppo was insolvent, Tordoff was an officer, director and controlling shareholder of the corporation.

18. While Gruppo was insolvent, Tordoff owed a fiduciary duty to creditors as defined by Snyder Electric Co. v. Fleming, 305 N.W.2d 863 (Minn. 1981). Specifically, Tordoff owed a duty not to pay those Gruppo creditors to whom he was secondarily liable to the prejudice of other creditors.

19. After February, 2003 and up through the date of this bankruptcy proceeding, Tordoff caused payments (“preferred payments”) to be made to Gruppo’s creditors to whom he was secondarily liable.

20. The preferred payments were to the prejudice of creditors such as RJM, Anderson and Harmon in an amount not capable of being determined with specificity at this time.

21. The actions of Tordoff above described constitute fraud or defalcation while acting in a fiduciary capacity pursuant to 11 U.S.C. § 523(a)(4).

**COUNT II - Exception to discharge under § 523(a)(2)(A)
for affirmative acts constituting false pretense,
false representation or actual fraud**

22. RJM repeats and realleges paragraphs 1 through 21 as though fully set forth herein.

23. Gruppo made written applications for progress payment to RJM that included,

with one exception, lien waivers.

24. The applications for payment and lien waivers were executed by Tordoff or at his direction by Gruppo employees within his control.

25. The applications for payment and lien waivers contained representations concerning past or contemporaneous payments to subcontractors that were false, misleading or intended to deceive. Specifically, subcontractors of Gruppo had not been and would not be paid with the progress payments being made by RJM.

26. Tordoff, as officer, director and controlling shareholder of Gruppo, had no intention of paying subcontractors with RJM's progress payments when he caused Gruppo to deliver the application for progress payment and lien waivers to RJM.

27. In reliance of these applications and lien waivers, RJM made progress payments to Gruppo totaling \$254,140.00. A portion of these Contract Funds should have been earmarked and paid over to Harmon and Anderson, but Gruppo did not do so.

28. Upon information and belief, Tordoff knew or should have known that RJM would rely on representations in the applications for progress payment and lien waivers.

29. RJM relied on the representations in the applications for progress payment and lien waivers and, as a direct result, suffered or will suffer damages in an amount equal to the claims by unpaid subcontractors of Gruppo, plus costs, disbursement, and interest as may be allowed by law.

30. The actions of Tordoff described above constitute the obtaining of money by use of a false pretense, false representation or actual fraud within the meaning of 11 U.S.C. § 523(a)(2)(A).

COUNT III - Exception to discharge under 11 U.S.C. § 523(a)(2)(A) for omissions constituting false pretense, false representation or actual fraud

31. RJM repeats and re-allages paragraphs 1 through 30 as though fully set forth herein.

32. Tordoff had an affirmative duty to advise RJM that progress payments were not and would not be used to pay subcontractors.

33. Tordoff's silence concerning this material issue and the diversion of contract funds for purposes other than what was represented to RJM constitutes a false pretense, a false representation or actual fraud pursuant to 11 U.S. C. § 523(a)(2)(A).

WHEREFORE, RJM respectfully prays for the following relief:

1. For a money judgment in favor of RJM and against Tordoff in the amount of \$62,831.52 plus costs, disbursements and interest or, in the alternative, in an amount to be determined at trial;

2. For a determination that RJM's money judgment against Tordoff is nondischargeable under 11 U.S.C. §§ 523(a)(2)(A) and 523(a)(4); and

3. For such further and different relief as the Court deems just and equitable.

LOMMEN, NELSON, COLE & STAGEBERG, P.A.

Dated: August 20, 2004

By Geraint D. Powell, I.D. No. 250594 /s/
Attorneys for Plaintiff
2000 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
(612) 339-8131
(612) 339-8064 - Facsimile

#232003

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

James Scott Tordoff,

Debtor.

Case No. 04-42018

Chapter 7 Case

RJM Construction, Inc.,

Plaintiff,

Adv. No. 04-4204

vs.

James Scott Tordoff,

Defendant.

Memorandum of Law

James Scott Tordoff (“Defendant”) submits this Memorandum of Law in support of his Motion for Judgment on the Pleadings (the “Motion”).

I. Statement of Facts

Defendant relies on the facts as set forth in the verified Motion and incorporates the same herewith.

II. Statement of Law and Argument

A. Standards Applicable to Motion to Dismiss

Rule 12(c) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by operation of Fed.R.Bankr.P. 7012, provides that “[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” “Judgment on the pleadings should be granted only if the moving party clearly

establishes that there are no material issues of fact and that it is entitled to judgment as a matter of law.”¹

C. 11 U.S.C. §523(a)(4)

The Plaintiff has alleged that its purported claim against the Debtor is nondischargeable by reason of Section 523(a)(4), the section of the Bankruptcy Code that excepts from discharge “any debt...for fraud or defalcation while acting in a fiduciary capacity...” In support of its cause of action under Section 523(a)(4), the Plaintiff has alleged that the Defendant’s status as an officer or director of an insolvent corporation satisfies the fiduciary duty requirement of Section 523(a)(4).

It is well established that Minnesota law imposes fiduciary obligations on certain insiders of insolvent corporations.² But the role of officers and directors of insolvent corporations contemplated in *Snyder* is not one that will satisfy the “fiduciary capacity” requirement of Section 523(a)(4). As the Defendant has previously observed in these proceedings, the meaning of “fiduciary” in nondischargeability actions is a question of federal law, and, according to the decided weight of authority, discharge should be denied under Section 523(a)(4) only in the case of misconduct related to the administration of “express” or “technical” trusts.³

The Defendant is aware that the Plaintiff has cited authority out of the Third Circuit that is at odds with Defendant’s position.⁴ With all due respect to the *Docteroff* court, the Defendant believes that that decision is flawed, and, in any event, is contrary to authority in the Eighth Circuit holding that “the fiduciary relationship must be one arising from an express or technical

¹ *Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8th Cir. 1999) (citation omitted).

² *Snyder Electric Co. v. Fleming*, 305 N.W.2d 863 (Minn. 1981).

³ See, e.g., *In re Bren*, 284 B.R. 681, 696 (Bankr. D. Minn. 2002) (citations omitted).

⁴ *In re Docteroff*, 133 F.3d 210 (3rd Cir. 1997).

trust that was imposed before and without reference to the wrongdoing that caused the debt.”⁵

As the Amended Complaint fails to allege that the Defendant owed a fiduciary duty to the Plaintiff by reason of an express or technical trust, dismissal of Count 1 is warranted.

C. 11 U.S.C. §523(a)(2)(A)

The Plaintiff further alleges that its purported claim against the Defendant is nondischargeable under Section 523(a)(2)(A), which excepts from discharge “any debt for money...to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor’s or an insider’s financial condition.” To succeed in a section 523(a)(2)(A) claim, a creditor must prove each of the following elements:

- (1) that the debtor made false representations;
- (2) that at the time made, the debtor knew them to be false;
- (3) that the representations were made with the intention and purpose of deceiving the creditor;
- (4) that the creditor reasonably relied on the representations; and, [sic]
- (5) that the creditor sustained the alleged injury as a proximate result of the representations having been made.⁶

Although nondischargeability actions based on fraud, misrepresentation, or false pretenses will typically involve affirmative representations, “silence, or the concealment of a material fact, can be the basis of a false impression which creates a misrepresentation actionable under section 523(a)(2)(A).”⁷

Among the allegations contained in the Amended Complaint that are relevant to the Plaintiff’s claim under Section 523(a)(2)(A) are the following:

1. Gruppo made written applications for progress payment to [the Plaintiff] that included, with one exception, lien waivers.⁸

⁵ *In re Cochrane*, 124 F.3d 978, 984 (8th Cir. 1997) (quoting *Lewis v. Scott*, 97 F.3d 1182, 1185 (9th Cir. 1996).

⁶ *In the Matter of Van Horne*, 823 F.2d 1285, 1287 (8th Cir. 1987) (citing *In re Jenkins*, 61 B.R. 30, 39 (Bankr. D. N.D. 1986).

⁷ *In re Maier*, 38 B.R. 231, 233 (Bankr. D. Minn. 1984), as quoted in *In re Wyant*, 236 B.R. 684, 695 (Bankr. D. Minn. 1999).

⁸ Amended Complaint at ¶ 23.

2. The applications for payment and lien waivers contained representations concerning past or contemporaneous payments to subcontractors that were false, misleading or intended to deceive. Specifically, subcontractors of Gruppo had not been and would not be paid with the progress payments being made by [the Plaintiff].⁹

3. [Defendant], as officer, director and controlling shareholder of Gruppo, had no intention of paying subcontractors with [the Plaintiff's] progress payments when he caused Gruppo to deliver the application for progress payment and lien waivers to [the Plaintiff].¹⁰

4. In reliance of these applications and lien waivers, [the Plaintiff] made progress payments to Gruppo totaling \$254,140.00. A portion of these Contract Funds should have been earmarked and paid over to [subcontractors], but Gruppo did not do so.¹¹

The Amended Complaint alleges two fundamental bases for relief under Section 523(a)(2)(A): (1) the Defendant made affirmative misrepresentations; and (2) the Defendant failed to disclose material facts, despite being under a duty to do so. With respect to the former, the Amended Complaint is deficient in that it does not actually point to any affirmative representation. The latter theory is most notably flawed because the Plaintiff has not alleged any basis on which a particular duty of disclosure might be imputed to the Defendant, and because the Amended Complaint does not describe circumstances suggesting that the Defendant's alleged non-disclosure was designed to mislead the Plaintiff. Finally, under either theory, the Plaintiff's claim under Section 523(a)(2)(A) must fail because the Amended Complaint does not recite facts that would support a finding of justifiable reliance by the Plaintiff.

1. There were no affirmative misrepresentations.

In support of its allegation that the Defendant made overt or affirmative misrepresentations of material fact, the Plaintiff only alleges that "[t]he applications for payment and lien waivers contained representations concerning past or contemporaneous payments to subcontractors that were false, misleading or intended to deceive. Specifically, subcontractors of

⁹ *Id.* at ¶ 25.

¹⁰ *Id.* at ¶ 26

¹¹ *Id.* at ¶ 27.

Gruppo had not been and would not be paid with the progress payments being made by RJM.”¹² Simply stated, neither the foregoing allegation nor any other allegation in the Amended Complaint describes or suggests the occurrence of any specific representation that would be relevant to a claim under Section 523(a)(2)(A). Accordingly, Count 2 of the Amended Complaint should be dismissed.

2. Defendant was under no duty of disclosure for purposes of Section 523(a)(2)(A).

At Paragraph 32 of the Amended Complaint, the Plaintiff alleges that the Defendant “had an affirmative duty to advise [the Plaintiff] that progress payments were not and would not be used to pay subcontractors.” The flaw in the Amended Complaint’s allegation of duty is that it is not supported by specific facts that would enable the Defendant to evaluate and answer the charge in a meaningful way. “An adversary complaint alleging fraud under §523(a)(2)(A) must state with particularity the circumstances constituting fraud to comply with the more rigid standard of pleading required under Rule 9(b)” of the Federal Rules of Civil Procedure.¹³ The Amended Complaint’s allegation of a duty of disclosure must be deemed insufficient by reason of its failure to plead with the necessary level of particularity, and dismissal of Count 3 is therefore warranted.

3. Defendant’s alleged non-disclosure cannot be deemed fraudulent

In considering the conditions under which silence might form the basis of a claim under Section 523(a)(2)(A), this Court has held that “[f]or an impression to rise to the level of a representation, it surely must be palpable, appreciable, and in fact recognized as such at the time

¹² *Id.* at ¶ 25.

¹³ *In re Dawson*, 264 B.R. 13, 16 (Bankr. N.D. Iowa 2001)

it is supposedly conveyed.”¹⁴ Read in a light most favorable to the Plaintiff, the facts alleged in the Amended Complaint do not describe circumstances that would support a finding that any alleged non-disclosure by the Defendant was of the sort contemplated in the *Wyant* decision.

Most significant to the analysis of the Defendant’s alleged silence is the allegation that “Gruppo made written applications for progress payment to RJM that included, with one exception, lien waivers.”¹⁵ In light of the fact that there is no allegation that any of the lien waivers were fraudulent, the only reasonable reading of the Amended Complaint is that the Plaintiff believed that the lack of lien waivers in one of the applications somehow amounted to an implied representation that, just as in the case of those applications that did include lien waivers, all of the relevant subcontractors had been paid. Given the course of dealing described in the Amended Complaint, Gruppo, by not including lien waivers in one of the applications actually put the Plaintiff on notice that there may have been failures to pay the claims of subcontractors. Assuming the truth of the facts alleged in the Amended Complaint, therefore, a finding of intentional misrepresentation by silence would not be justified.

4. Justifiable Reliance

Even if the Plaintiff were able to prove that the Defendant either misrepresented facts or failed to disclose material information, its claims under Section 523(a)(2)(A) could not succeed because, on the facts alleged, there can be no showing of justifiable reliance. The Plaintiff’s inability to demonstrate justifiable reliance stems both from what the Amended Complaint alleges and from what it fails to allege.

First is the allegation that all but one of the applications included lien waivers. For the reasons described in the immediately preceding section, at least with respect to that application

¹⁴ *In re Wyant*, 236 B.R. 684, 697 (Bankr. D. Minn. 1999).

¹⁵ Amended Complaint at ¶ 23.

that did not include lien waivers, the Plaintiff's purported reliance on the effective equivalent of lien waivers cannot be considered justifiable.

Beyond the fact that, by all appearances, Gruppo made completely accurate disclosure of all payments to subcontractors as of the time it submitted each application, the Amended Complaint is deficient in that it fails to allege that Plaintiff had any discretion in making the payments at issue. It is true that the Plaintiff has alleged that it relied on the representations or misrepresentations, but in order to plead with the degree of particularity necessary in cases such as this, the Amended Complaint should more fully describe the payment terms of the relevant contract. Unless the Plaintiff can demonstrate that its duty to pay the Defendant would not arise unless it were first assured that subcontractors had been paid, there can be no finding of any level of reliance: "Claimed reliance that is without right...is in reality not reliance at all."¹⁶ Because it omits reference to the pertinent contract terms, the Amended Complaint does not allege facts that would demonstrate that the Plaintiff was truly induced to make any payments by any events other than the completion of contracted-for work.

Finally, with respect to the issue of justifiable reliance, the Plaintiff has suggested that it was compelled to make the subject payments because it believed that "[a] portion of the [payments] should have been earmarked and paid over" to certain named subcontractors. The implication of that allegation being that Gruppo was under an obligation to segregate the proceeds of those payments in order to satisfy obligations to certain subcontractors.

The earmarking requirement asserted by the Plaintiff is specifically addressed in Section 514.02 of the Minnesota Statutes. The statute, which is part of the Minnesota mechanics' lien statute, provides, in relevant part:

¹⁶ *In re King*, 68 B.R. 569, 572 n. 7 (Bankr. D. Minn. 1986).

(a) Proceeds of payments received by a person contributing to an improvement to real estate within the meaning of section 514.01 shall be held in trust by that person for the benefit of those persons who furnished the labor, skill, material, or machinery contributing to the improvement...Nothing contained in this subdivision shall require money to be placed in a separate account and not commingled with other money of the person receiving payment...

Considering that the statute explicitly condones commingling of payments of the sort at issue here, it cannot be maintained that the Plaintiff would have been justified in relying on the earmarking of funds at the time it remitted any of the payments. The Amended Complaint does not, and cannot, allege that there were any affirmative representations that its payments would be segregated; the Plaintiff's purported reliance on the earmarking of any portion of the proceeds it paid to Gruppo cannot, as a matter of law, be deemed justifiable.

III. Conclusion

In considering the significance of non-disclosure in cases under Section 523(a)(2)(A), the Eighth Circuit has opined that “[w]hile it is certainly not practicable to require the debtor to ‘bare his soul’ before the creditor, the creditor has the right to know those facts touching upon the essence of the transaction.”¹⁷ In this case, based on the allegations contained in the Amended Complaint, Gruppo must be deemed to have informed the Plaintiff of just those essential facts, and to have done so in an entirely reasonable manner. The real essence of the Plaintiff's cause of action is not misrepresentation, but a failure to emphasize the fact that one of the payment applications did not include lien waivers. In other words, the Plaintiff would have this Court decide that the purported claim against the Defendant should be excepted from discharge because Gruppo did not take extraordinary steps to warn the Plaintiff of the possibility that it would be unable to meet all of its contractual obligations.

¹⁷ *Van Horne*, 823 F.2d at 1288 (8th Cir. 1987).

As the Amended Complaint does not allege fact that would support personal liability on the part of the Defendant, much less the exception of that liability from discharge, the Court should dismiss all claims asserted by the Plaintiff.

Respectfully submitted,

HENSON & EFRON, P.A.

Dated: August 30, 2004

/s/ William I. Kampf
William I. Kampf (#53387)
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Telephone: 612-339-2500

Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

James Scott Tordoff,

Debtor.

Case No. 04-42018

Chapter 7 Case

RJM Construction, Inc.,

Plaintiff,

Adv. No. 04-4204

v.

PROOF OF SERVICE

James Scott Tordoff,

Defendant.

The undersigned states that she is an employee of Henson & Efron, P.A., and in the course of said employment, on the date indicated below, she served the following:

Defendant's Motion for Judgment on Pleadings; Memorandum of Law; Proposed Order Dismissing Complaint; and Proof of Service

on the entities named below and/or on the attached service by enclosing true and correct copies of same in an envelope, properly addressed and postage prepaid, and depositing same in the United States mail, unless otherwise noted; and that she certifies the foregoing under penalty of perjury.

United States Trustee
300 South Fourth Street
1015 U.S. Courthouse
Minneapolis, MN 55415

Geraint D. Powell
Lommen, Nelson, et al.
80 S Eighth St, Ste 2000
Minneapolis, MN 55402

Brian F. Leonard
Chapter 7 Trustee
55 E Fifth St, Ste 800
St. Paul, MN 55101

Dated: August 31, 2004

/e/ Tawney Jameson

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

James Scott Tordoff,

Debtor.

Case No. 04-42018

Chapter 7 Case

RJM Construction, Inc.,

Plaintiff,

Adv. No. 04-4204

vs.

James Scott Tordoff,

Defendant.

ORDER DISMISSING COMPLAINT

This matter came before the Court on the Motion for Judgment on the Pleadings (the “Motion”) filed by the Defendant. Appearances of counsel were as noted in the record. Based on the Motion, the arguments of counsel, and the file, record and proceedings herein, the Court, being duly advised in the premises,

IT IS ORDERED:

1. The Motion is granted.
2. Plaintiff’s Amended Complaint is dismissed with prejudice.

BY THE COURT:

Dated: _____

Robert J. Kressel
U. S. Bankruptcy Judge